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9
10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 CRAIGSLIST, INC., a Delaware
corporation,
13 Plaintiff,

14 v.

15 3TAPS, INC., a Delaware corporation;
PADMAPPER, INC., a Delaware
corporation; DISCOVER HOME
16 NETWORK, INC., a Delaware corporation
d/b/a LOVELY; HARD YAKA, INC., a
17 Delaware corporation; BRIAN R. NIESSEN,
an individual; ROBERT G. KIDD, an
18 individual; and Does 1 through 25, inclusive
19 Defendants.

20 3TAPS, INC., a Delaware corporation,
21 Counter-claimant,

22 v.

23 CRAIGSLIST, INC., a Delaware
corporation,
24 Counter-defendant.

CASE NO.: 3:12-cv-03816 CRB

Assigned to Hon. Charles Breyer

**DEFENDANT 3TAPS, INC.'S AMENDED
ANSWER TO CRAIGSLIST'S SECOND
AMENDED COMPLAINT**

JURY TRIAL DEMANDED

Honorable Charles R. Breyer

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ROBERT G. KIDD

Defendant 3taps, Inc. (“3taps”) files its amended answer and affirmative defenses to the Second Amended Complaint (“SAC”) of Plaintiff craigslist, Inc. (“craigslist”) as follows:

To the extent the paragraphs of the SAC are grouped under headings, 3taps responds generally that such headings, which are repeated below for convenience only, contain legal conclusions to which no response is required. To the extent a response is deemed necessary, 3taps denies any allegations contained in each heading in the SAC.

3taps, by and through undersigned counsel, denies each and every allegation in the SAC except those specifically admitted in this Answer. 3taps’ admissions and denials are based on knowledge, information, and belief gained and/or formed through reasonable inquiry conducted in response to receipt of the SAC.

INTRODUCTION

1. 3taps admits that craigslist provides what is commonly known as “classified” advertising, but denies that this form of advertising is in any way “unique” to craigslist, or that “classified” advertising is a concept originated by craigslist. 3taps further denies that craigslist operates itself as a free public service, since craigslist is a for-profit enterprise whose value as a going concern is estimated by a principal stakeholder as worth “several billion dollars.” (source: *craigslist, Inc., v. eBay, Inc., et al.*, Superior Court for the County of San Francisco, case number CGC-08-475276, filed May 13, 2008. craigslist is a private company and does not publish its financial information.) Ads posted on craigslist’s website are created by users. 3taps denies all remaining allegations in paragraph 1.

2. 3taps denies the allegations in paragraph 2. To the extent the allegations in paragraph 2 relate to defendants other than 3taps, 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and, therefore, denies the same.

3. 3taps admits that it syndicates user-generated content posted on craigslist’s website through an Application Programming Interface (“API”). 3taps denies that its API is “unauthorized” or “illegitimate,” as 3taps only accesses publicly available, user-generated information on public websites. 3taps denies the remaining allegations in paragraph 3 to the extent that they suggest that activities by 3taps make any private data public, or that 3taps harvests or

1 redistributes any content owned by craigslist – to the contrary, craigslist itself makes that data
2 “available to all manner of for-profit entities to copy, repurpose, redisplay, redistribute, surround
3 with advertisements, expose to non-local audiences, subject to marketing come-ons, disturb with
4 unsolicited communications, and otherwise exploit commercially” by allowing the data in its users’
5 postings to be indexed by general search engines such as Google and Bing. 3taps denies that users
6 “entrust” any information to craigslist, because its website’s function is to make public all user-
7 originated ads it receives – for which craigslist repeatedly and explicitly disclaims any
8 responsibility. 3taps denies all remaining allegations in paragraph 3.

9 4. 3taps admits that it operated craiggers.com and that it provided a craiggers mobile
10 application. 3taps denies that its API or database is “illegitimate;” in fact, 3taps’ database of public
11 information is both legitimate and a public benefit. 3taps denies that craiggers.com infringed any
12 craigslist trademarks or had any deleterious effect on craigslist, and 3taps denies that “essential
13 locality,” whatever that may be, is legally protectable property owned by craigslist. At present,
14 craiggers.com is not an active website. 3taps denies all remaining allegations in paragraph 4.

15 5. 3taps admits that Discover Home Network, Inc., d/b/a Lovely (“Lovely”), uses
16 publicly available, user-generated content posted on craigslist’s website and indexed by 3taps, but
17 denies that there is any impropriety associated with this use or with Lovely. 3taps admits that
18 Lovely competes directly with craigslist. 3taps denies the remaining allegations in paragraph 5 that
19 relate to 3taps’ conduct. To the extent the allegations in paragraph 5 relate to defendants other than
20 3taps, 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations in paragraph 5 and, therefore, denies the same.

22 6. 3taps admits that PadMapper, Inc. (“PadMapper”) also uses publicly available, user-
23 generated content posted on craigslist’s website and indexed by 3taps, but denies that there is any
24 impropriety associated with this use or with PadMapper. 3taps admits that PadMapper competes
25 with craigslist. 3taps denies the remaining allegations in paragraph 6 that relate to 3taps’ conduct.
26 To the extent the remaining allegations in paragraph 6 relate to defendants other than 3taps, 3taps
27 lacks knowledge or information sufficient to form a belief as to the truth of those allegations and,
28 therefore, denies the same.

1 7. 3taps denies that craigslist is entitled to rely on homespun tritisms in the prosecution
2 of its lawsuit, including the one “no good deed goes unpunished.” 3taps denies that craigslist
3 engages in its highly profitable business as a “good deed.” 3taps denies the remaining allegations
4 in paragraph 7 that relate to 3taps’ conduct. To the extent the allegations in paragraph 7 relate to
5 defendants other than 3taps, 3taps lacks knowledge or information sufficient to form a belief as to
6 the truth of those allegations in paragraph 7 and, therefore, denies the same.

7 8. 3taps denies the allegations in paragraph 8, and specifically denies that 3taps or
8 Mr. Greg Kidd has advocated, condoned or engaged in violations of law of any kind. 3taps further
9 and specifically denies that it has exploited to its commercial advantage any “protected” aspect of
10 the craigslist website, since the utility of that site is its publicly accessible nature. 3taps further
11 denies that it regards any copyright law as anything but valid; rather, craigslist is attempting to
12 misuse copyright law to construct “artificial confines” to control third-party content that it does not
13 own. 3taps denies the remaining allegations in paragraph 8 that relate to 3taps’ conduct. To the
14 extent the allegations in paragraph 8 relate to defendants other than 3taps, 3taps lacks knowledge or
15 information sufficient to form a belief as to the truth of those allegations in paragraph 8 and,
16 therefore, denies the same.

17 9. 3taps denies the allegations in paragraph 9, and specifically denies that craigslist has
18 any ownership interest in user-generated ads posted on its website. 3taps only indexes publicly
19 available, user-generated content, which craigslist does not own and which is not “craigslist
20 content.” Indeed, craigslist’s Terms of Use (“TOU”) disclaim any and all responsibility for user
21 content. 3taps denies that it is usurping or misappropriating anything from craigslist. 3taps denies
22 the remaining allegations in paragraph 9 that relate to 3taps’ conduct. To the extent the allegations
23 in paragraph 9 relate to defendants other than 3taps, 3taps lacks knowledge or information
24 sufficient to form a belief as to the truth of those allegations in paragraph 9 and, therefore, denies
25 the same.

26 10. 3taps denies the allegations in paragraph 10, and specifically denies that any of its
27 activities unlawfully harm craigslist and/or its users. 3taps denies that its activities violate
28 craigslist’s intellectual property or other statutory or common law rights. To the extent the

1 allegations in paragraph 10 relate to defendants other than 3taps, 3taps lacks knowledge or
2 information sufficient to form a belief as to the truth of those allegations in paragraph 10 and,
3 therefore, denies the same.

4 **JURISDICTION AND VENUE**

5 11. 3taps admits that this Court has jurisdiction over the subject matter but denies any
6 violations of any federal statute.

7 12. 3taps admits that this Court has supplemental jurisdiction over the remaining claims
8 but denies any violations of state or common law.

9 13. 3taps admits that venue is proper in this District but denies any implied underlying
10 factual allegations.

11 14. craigslist's TOU speaks for itself, and 3taps denies any craigslist characterization of
12 its TOU. 3taps denies that its activities are governed by craigslist's TOU. 3taps denies all
13 remaining allegations in paragraph 14 as they relate to 3taps. To the extent the allegations in
14 paragraph 14 relate to defendants other than 3taps, 3taps lacks knowledge or information sufficient
15 to form a belief as to the truth of the allegations in paragraph 14 and, therefore, denies the same.

16 15. 3taps admits that, since August 2012, it has contracted with a third party to obtain
17 publicly available, user-generated content from craigslist's website. 3taps denies, however, that it
18 has accessed or contracted for access to craigslist's servers "without authorization." 3taps denies
19 all remaining allegations in paragraph 15 as they relate to 3taps. To the extent the allegations in
20 paragraph 15 relate to defendants other than 3taps, 3taps lacks knowledge or information sufficient
21 to form a belief as to the truth of those allegations in paragraph 15 and, therefore, denies the same.

22 16. 3taps admits the allegations in paragraph 16.

23 **THE PARTIES**

24 17. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in paragraph 17 and, therefore, denies the same.

26 18. 3taps admits the allegations in paragraph 18.

27 19. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
28 allegations in paragraph 19 and, therefore, denies the same.

20. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 and, therefore, denies the same.

21. 3taps admits the allegations in paragraph 21.

22. 3taps denies the allegations in paragraph 22.

23. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and, therefore, denies the same.

24. 3taps admits the allegations in paragraph 24.

25. 3taps admits that Defendant Kidd was and is the founder and Chief Executive Officer of 3taps at all times relevant to this litigation. 3taps denies the remaining allegations in paragraph 25.

26. 3taps denies the allegations in paragraph 26.

27. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and, therefore, denies the same.

28. 3taps does not admit or deny the allegations in paragraph 28, as they relate only to collectively referring to 3taps, PadMapper, Lovely, Niessen, Kidd, Hard Yaka, and Doe Defendants as “Defendants.”

FACTS

29. 3taps admits that craigslist’s origins were modest, and that it was at one point an entirely free “community” site for the dissemination of information, including information regarding items for sale. 3taps denies the insinuation that craigslist continues to function altruistically, since it is now, and has long been, a highly profitable and dominant website generating hundreds of millions of dollars in annual revenue for its principal (and few) stakeholders, with its website’s worth estimated at billions of dollars. 3taps denies the remaining allegations in paragraph 29.

30. 3taps admits that craigslist dominates the domestic markets it serves, that it has become synonymous with online classified advertising in these markets, and that the “several hundred million classified ads” users post on craigslist are not drafted or created by craigslist. 3taps denies all remaining allegations in paragraph 30.

1 31. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in paragraph 31 and, therefore, denies the same.

3 32. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in paragraph 32 and, therefore, denies the same.

5 **A. The craigslist Classified Ad Service.**

6 33. 3taps admits that users can post localized classified advertisements on craigslist's
7 website. 3taps denies the remaining allegation in paragraph 33.

8 34. 3taps admits that craigslist has operated to create a "one-stop shop" for multiple
9 online consumer needs, but denies that craigslist's market dominance has been beneficial. 3taps
10 further admits that craigslist is an online "classified ad" service. 3taps denies that the organization
11 of craigslist's website is innovative in any way. 3taps denies all remaining allegations in paragraph
12 34.

13 35. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in paragraph 35 and, therefore, denies the same.

15 36. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations in paragraph 36 and, therefore, denies the same.

17 37. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations in paragraph 37 and, therefore, denies the same.

19 38. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations in paragraph 38 and, therefore, denies the same.

21 39. 3taps admits that users can create a classified ad. 3taps lacks knowledge or
22 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 39
23 and, therefore, denies the same.

24 40. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in paragraph 40 and, therefore, denies the same.

26 41. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations in paragraph 41 and, therefore, denies the same.
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1 42. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in paragraph 42 and, therefore, denies the same.

3 43. 3taps admits that, for the period from July 16, 2012, through August 8, 2012,
4 craigslist purportedly imposed a provision that required users to “confirm” that craigslist was the
5 exclusive licensee of user-generated content posted to its website. 3taps lacks knowledge or
6 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 43
7 and, therefore, denies the same.

8 44. 3taps admits the allegations in the first sentence of paragraph 44 but denies that
9 craigslist owns or is the exclusive licensee of any copyright in ads posted by users, and denies the
10 validity and applicability of craigslist’s copyright notice. 3taps further admits that craigslist marks
11 some ads with a copyright notice, but this marketing is deceptive and amounts to misuse because
12 craigslist does not own user-generated content. 3taps lacks knowledge or information sufficient to
13 form a belief as to the truth of the remaining allegations in paragraph 44 and, therefore, denies the
14 same.

15 45. 3taps admits that craigslist has attempted to register intellectual property with
16 various agencies, but understands those attempts have all been denied. 3taps denies that these
17 registrations are proper or valid, denies that craigslist may rely on copyright or trademark law to
18 protect intellectual property it has not created and does not own, and denies that craigslist may rely
19 on copyright or trademark law to claim the classified ad format as its own. 3taps lacks knowledge
20 or information sufficient to form a belief as to the truth of the remaining allegations in paragraph
21 45 and, therefore, denies the same.

22 46. 3taps admits that craigslist has used its market dominance in “classified ads” to
23 attempt to extract payment concessions from those who would properly use information posted by
24 users, even though craigslist disclaims any legal responsibility for this user-generated content,
25 which it does not own. 3taps lacks knowledge or information sufficient to form a belief as to the
26 truth of the entirety of the remaining allegations in paragraph 46 and, therefore, denies the same.

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1 B. The craigslist Terms of Use.

2 47. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations in paragraph 47 and, therefore, denies the same.

4 48. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations in paragraph 48 and, therefore, denies the same.

6 49. 3taps admits that craigslist purports to allow certain third parties access and
7 interoperation with its public data and public website and purports to deny other users the ability to
8 access and interoperate with its public data and public website. 3taps denies the remaining
9 allegations in the first sentence of paragraph 49. 3taps lacks knowledge or information sufficient to
10 form a belief as to the truth of the remaining allegations in paragraph 49.

11 50. 3taps denies the allegations in paragraph 50.

12 51. 3taps denies the allegations in paragraph 51.

13 52. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in paragraph 52 and, therefore, denies the same.

15 C. The craigslist Copyrights.

16 53. 3taps denies the first sentence of paragraph 53. 3taps admits that elements of
17 craigslist's website include account registration, log-in, and posting features. 3taps denies the
18 remaining allegations in paragraph 53.

19 54. 3taps denies the originality of the craigslist website, and denies that "simplicity" or
20 "clarity" describes aspects of the user's experience. 3taps admits that craigslist has achieved a
21 position of market dominance, which it now uses to obstruct the free dissemination of factual
22 information prepared by others for placement on its site. 3taps denies all remaining allegations in
23 paragraph 54.

24 55. 3taps denies that craigslist has standing to assert ownership over the factual content
25 in ads drafted by individual users who own or control the product or service for sale, and denies
26 that craigslist may assert rights of ownership of this content, particularly after the seller has drafted
27 the ad and launched it into the public domain via craigslist. 3taps admits that user-generated
28

1 postings on craigslist often contain a written description of goods or services, and that the postings
2 can contain photographs. 3taps denies the remaining allegations in paragraph 55.

3 56. 3taps admits that craigslist makes or has made the grandiose ownership claims
4 contained in this paragraph, but denies that craigslist is entitled to assert any of them. 3taps
5 specifically denies that craigslist either owns or has exclusive rights to the information held within
6 the database underlying craigslist's website or to the content of user-generated ads. Moreover,
7 none of craigslist's U.S. copyright registrations list "third-party text" as an element for the basis of
8 the copyright claim. craigslist included "third-party text" as pre-existing material, thereby
9 differentiating third-party text from its own "text." Thus, craigslist's copyright registrations do not
10 cover the "third-party text" from user-generated ads. 3taps denies the remaining allegations in
11 paragraph 56.

12 57. 3taps admits that craigslist is the listed copyright claimant of the U.S. copyright
13 registrations listed in paragraph 57, but denies the remaining allegations in paragraph 57.

14 58. 3taps admits that U.S. copyright registration TX0007547907 lists craigslist as the
15 copyright claimant and has a date of publication of July 19, 2012. 3taps lacks knowledge or
16 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 58
17 and, therefore, denies the same.

18 59. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations in paragraph 59 and, therefore, denies the same.

20 **D. The craigslist Trademarks.**

21 60. 3taps admits that craigslist is the listed registrant of the U.S. trademark registrations
22 listed in paragraph 60 and that the registrations purport to cover the goods or services listed in
23 paragraph 60. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations in paragraph 60, and therefore, denies the same.

25 61. 3taps admits that the U.S. trademark registrations listed in paragraph 61 note
26 19950701 as the date of first use in commerce. 3taps lacks knowledge or information sufficient to
27 form a belief as to the truth of the remaining allegations in paragraph 61 and, therefore, denies the
28 same.

62. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 and, therefore, denies the same.

63. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 and, therefore, denies the same.

64. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 and, therefore, denies the same.

65. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 and, therefore, denies the same.

E. The Defendants' Unlawful Activities.

a. 3taps.

66. 3taps denies that it is "misappropriating" any of craigslist's protected content. 3taps admits that it provides access to user-generated content that is publicly available on craigslist's website, but denies that any of this content is "craigslist's protected content." 3taps denies that it is providing access to any content that craigslist owns or to which craigslist has exclusive rights. 3taps admits that it dedicates considerable attention to craigslist since craigslist has attained such a position of market dominance in online classified advertising. 3taps denies all remaining allegations in paragraph 66.

67. 3taps admits that it has aggregated data from a variety of publicly available sources, but 3taps denies that it is "misappropriating" any content that craigslist may legitimately protect as its intellectual property. 3taps denies all remaining allegations in paragraph 67.

68. 3taps admits that it provides access to user-generated content posted on craigslist's website. 3taps denies the remaining allegations in paragraph 68.

69. 3taps denies that it is "copying" any content craigslist may lawfully claim as its own. 3taps admits that it provides access to user-generated content that users, through craigslist, have made publicly available. 3taps denies that it is storing or providing access to any content that craigslist may lawfully claim as its own or to which craigslist has exclusive legal rights. 3taps denies the remaining allegations in paragraph 69.

1 70. 3taps admits that it provides an API to access user-generated content that craigslist
2 users have made publicly available. 3taps denies that craigslist has an exclusive right to offer an
3 API or control the distribution of user-generated content, and denies that craigslist has any
4 exclusive rights over user-generated content. 3taps denies all remaining allegations in paragraph
5 70.

6 71. 3taps admits that it created craiggers.com and provided access to publicly available,
7 user-generated content, all as previously described throughout this pleading, but denies that it
8 replicated or intended to replicate the entire craigslist website. In fact, craiggers offered markedly
9 different and innovative features that are not available on the craigslist website. The craiggers.com
10 site is not currently operational. 3taps denies all remaining allegations in paragraph 71.

11 72. 3taps denies that craigslist has any exclusive or other legal rights over user-
12 generated content. Moreover, none of craigslist's U.S. copyright registrations list "third-party text"
13 as an element of the copyright claim. craigslist included "third-party text" as pre-existing material
14 only to differentiate it from its own "text." Thus, craigslist's copyright registrations do not cover
15 "third-party text" from user-generated ads. 3taps also denies that craiggers.com depicts posts in a
16 format "virtually identical" to that of craigslist's website. craigslist formerly depicted user-
17 generated ad pictures in a basic four-picture panel with each picture being an equal size. It was
18 3taps that introduced the concept of a large viewer for one picture and the ability to scroll through
19 individual pictures. craigslist copied this technique from 3taps. 3taps denies all remaining
20 allegations in paragraph 72.

21 73. 3taps denies that it placed a notice on postings on craiggers.com that the content is
22 not copyrighted. 3taps admits that it placed a Public Domain Mark created by Creative Commons
23 that the postings, as used, are free of known copyright restriction and that the postings pages state
24 "powered by 3taps." 3taps denies that its notice is "blithe and false" and denies that content was
25 "misappropriated from craigslist." 3taps denies that craigslist has any exclusive or other legal
26 rights over user-generated content. 3taps denies all remaining allegations in paragraph 73.

27 74. 3taps denies that it "copie[d] key design elements of the craigslist website." The
28 basic listing and organization of online postings based on factual descriptions of the categories is

1 not a key design element. Basic word processing formats such as columns are not key design
2 elements. 3taps denies all remaining allegations in paragraph 74.

3 75. 3taps admits that it provided a “craiggers” mobile phone application. 3taps denies
4 that craigslist has any exclusive or other legal rights over user-generated content. 3taps denies all
5 remaining allegations in paragraph 75.

6 76. 3taps admits that it used the word “craigslist” to distinguish its own product and
7 services from those of craigslist. 3taps denies the remaining allegations in paragraph 76.

8 77. 3taps admits that it used the word “craigslist” to distinguish its own product and
9 services from those of craigslist. 3taps denies the remaining allegations in paragraph 77.

10 78. 3taps admits that it used the word “craigslist” to distinguish its own product and
11 services from those of craigslist. 3taps denies the remaining allegations in paragraph 78.

12 79. 3taps admits that it used the word “craigslist” to distinguish its own product and
13 services from those of craigslist. 3taps denies the remaining allegations in paragraph 79. 3taps
14 also denies the underlying factual implication that it has made any unlawful use of any of
15 craigslist’s intellectual property, or that craigslist must “consent” prior to use of and access to user-
16 generated content posted on its website.

17 80. 3taps admits that it has ended operation of craiggers.com. 3taps denies the
18 implication that its operation of craiggers.com was unlawful in any way. 3taps denies all
19 remaining allegations in paragraph 80.

20 81. 3taps admits that it created and operates Jeboom.com and that Jeboom.com
21 displayed publicly available content originally found on craigslist. 3taps denies any remaining
22 allegations in paragraph 81, specifically craigslist’s characterization of the content as “craigslist
23 content.”

b. 3taps' Unauthorized Scraping.

82. 3taps admits that it publicly stated that it obtained publicly available, user-generated content posted on craigslist's website from publicly available sources such as Google and Bing, and not by "scraping" craigslist's website. 3taps denies the remaining allegations in paragraph 82.

83. 3taps admits that craigslist has allowed general search engines to "scrape" the craigslist website and also admits that, on August 7, 2012, 3taps announced that craigslist had instructed all general search engines to stop indexing craigslist postings. As stated in 3taps' First Amended Counterclaim, 3taps alleges that craigslist took action in August 2012 to interfere with 3taps' ability to rely on general search engines to source user-generated content posted on craigslist's website. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 83 and, therefore, denies the same.

84. 3taps denies that craigslist has the legal right to authorize whether search engines make cached versions of user-generated content available for others to harvest wholesale. 3taps denies that craigslist's "NOARCHIVE" instruction has prevented general search engines from maintaining caches of user-generated content posted on craigslist's website and, therefore, denies the same. Indeed, for years, craigslist has permitted general search engines, such as Google, to maintain caches of the user-generated content posted on its website. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 84 and, therefore, denies the same.

85. 3taps denies the allegations in paragraph 85.

86. 3taps admits that a web crawler, also known as a "robot," "bot," or "spider" is a computer program that browses and gathers information from the Internet. 3taps admits that it has contracted with third parties to obtain publicly available, user-generated content posted on craigslist's website. 3taps denies that any of this content is "craigslist's content." 3taps denies the remaining allegations in paragraph 86.

87. 3taps admits it has contracted with third parties to access the publicly available, user-generated content posted on craigslist's website. 3taps denies that it "enters" or "searches" craigslist's website or that it "extracts" craigslist postings. 3taps admits that it contracts with web

1 crawlers to access the publicly viewable portion of craigslist and third-party search engines to
2 retrieve publicly available posting data. 3taps admits that third parties merely send a request to
3 those servers (just as any other user does), and craigslist or the third-party search engines volunteer
4 the data back to 3taps' servers. The processes employed by 3taps to crawl data are substantially
5 the same as the processes employed by the other Internet search engines that craigslist apparently
6 "allows" access to the publicly available information on its website. 3taps denies the remaining
7 allegations in paragraph 87.

8 88. 3taps denies any "improper conduct." 3taps lacks knowledge or information
9 sufficient to form a belief as to the truth of the remaining allegations in paragraph 88 and, therefore,
10 denies the same.

11 89. 3taps admits that blocked IP addresses are no longer used for accessing public data
12 on public websites. 3taps denies that it owes an obligation to craigslist or any other party to
13 identity itself when choosing to access public data on a public website and therefore denies that it
14 had any cause or need to hide its path of access any more than any other user might wish to keep
15 his or her identity private when viewing particular public data on a public web site. The right to
16 privacy is not an obligation to disclose, and, therefore, there is no issue of secrecy or hiding in the
17 use of multiple IP addresses. 3taps denies the remaining allegations in paragraph 89 that relate to
18 3taps. As for the remaining allegations that do not relate to 3taps, 3taps lacks knowledge or
19 information sufficient to form a belief as to the truth of those allegations and, therefore, denies the
20 same.

21 90. 3taps admits that, at some point, it determined that craigslist had attempted to block
22 certain IP addresses that a third party contracted by 3taps used. 3taps lacks knowledge or
23 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 90
24 and, therefore, denies the same.

25 91. 3taps admits that it crowd sources proxies to enable fault tolerant collection of
26 publicly available, user-generated content from public websites. 3taps denies the remaining
27 allegations in paragraph 91.

28 92. 3taps denies the allegations in paragraph 92.

1 93. 3taps admits that it continues to obtain publicly available, user-generated content
2 posted on craigslist's website. 3taps denies that any of its activities are illegal and denies all
3 remaining allegations in paragraph 93 that relate to 3taps. 3taps lacks knowledge or information
4 sufficient to form a belief as to the truth of the remaining allegations in paragraph 86 and, therefore,
5 denies the same.

6 **c. Brian R. Niessen: One Of 3taps' "Scrapers."**

7 94. 3taps admits that it has, at times, used a third party, Mr. Brian Niessen, to assist in
8 obtaining publicly available, user-generated content from craigslist's publicly available website.
9 3taps denies that any of its conduct is unlawful. 3taps denies the remaining allegations in
10 paragraph 94.

11 95. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in paragraph 95 and, therefore, denies the same.

13 96. 3taps denies that Mr. Greg Kidd is an investor in Startup Stock Exchange. 3taps
14 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
15 allegations in paragraph 96 and, therefore, denies the same.

16 97. 3taps admits that it publishes statistics regarding its activities, including audits of
17 the completeness of its operations. 3taps denies the allegation that a link to qatro.com is linked
18 prominently on the 3taps website. 3taps lacks knowledge or information sufficient to form a belief
19 as to the truth of the remaining allegations in paragraph 97 and, therefore, denies the same.

20 98. 3taps admits that Mr. Niessen obtains publicly available, user-generated content
21 posted on craigslist's website at the behest of 3taps. 3taps denies the characterization of "craigslist
22 content" because the information 3taps obtains is publicly available, user-generated content. 3taps
23 denies the remaining allegations in paragraph 98.

24 99. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in paragraph 99 and, therefore, denies the same.

26 100. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations in paragraph 100 and, therefore, denies the same.

28

101. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 101 and, therefore, denies the same.

102. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 102 and, therefore, denies the same.

103. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 103 and, therefore, denies the same.

104. 3taps admits that it publicly shares information on the operational details of its data collection. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 104 and, therefore, denies the same.

105. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 105 and, therefore, denies the same.

d. 3taps' Unauthorized Spamming.

106. 3taps denies the allegations in paragraph 106 to the extent they relate to 3taps. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 106 and, therefore, denies the same.

107. The documents from which craigslist selectively quotes speak for themselves. 3taps denies any craigslist characterization of the documents or any remaining allegations in paragraph 107.

108. 3taps denies the allegations in paragraph 108.

109. 3taps denies the allegations in paragraph 109.

110. 3taps denies the allegations in paragraph 110.

111. 3taps denies the allegations in paragraph 111.

112. The documents from which craigslist selectively quotes speak for themselves. 3taps denies any craigslist characterization of the documents or any remaining allegations in the first sentence of paragraph 112. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 112 and, therefore, denies the same.

e. PadMapper.

113. 3taps admits that PadMapper is a direct competitor to craigslist's real estate listing services and that PadMapper provides searchable rental listings in cities in the United States and United Kingdom, but denies the allegation that the vast majority of PadMapper's content is misappropriated from craigslist. 3taps denies that any scraping performed at 3taps' direction is unlawful or that 3taps' API is illegitimate. 3taps denies the remaining allegations in paragraph 113.

114. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 114 and, therefore, denies the same.

115. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 115 and, therefore, denies the same.

116. 3taps admits that PadMapper.com site traffic plummeted drastically when user-generated content posted on craigslist was removed from the site. 3taps otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 116 and, therefore, denies the same.

117. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 117 and, therefore, denies the same.

118. 3taps denies that it has misappropriated craigslist content. 3taps otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 118 and, therefore, denies the same.

119. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 119 and, therefore, denies the same.

120. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 120 and, therefore, denies the same.

121. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 121 and, therefore, denies the same.

122. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 122 and, therefore, denies the same.

123. 3taps admits that the PadLister service accepts real estate listings that originate separate and apart from craigslist. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 123 and, therefore, denies the same.

124. 3taps denies that it has misappropriated craigslist content. 3taps otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 124 and, therefore, denies the same.

f. Lovely's Unauthorized Scraping.

125. 3taps admits that Lovely is a direct competitor to craigslist's real estate listing services and that Lovely provides searchable rental listings.

126. 3taps admits that Lovely operates a website at livelovely.com as well as a mobile iPhone application that provides searchable apartment rental listings. 3taps denies that any scraping performed at 3taps' direction is unlawful, that 3taps' API is illegitimate, or that any content obtained from craigslist's website is misappropriated. 3taps otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 126 and, therefore, denies the same.

127. 3taps denies the allegations contained in paragraph 127.

128. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 128 and, therefore, denies the same.

129. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 129 and, therefore, denies the same.

130. 3taps admits that craigslist sent Lovely a purported cease-and-desist letter. The cease-and-desist letter speaks for itself, and 3taps denies any craigslist characterization of the cease-and-desist letter. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 130 and, therefore, denies the same.

131. 3taps denies that it has an "illegitimate store" which is populated by "unlawful scrapers." 3taps otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 131 and, therefore, denies the same.

g. Lovely's Unauthorized Spamming

132. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 132 and, therefore, denies the same.

133. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 133 and, therefore, denies the same.

134. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 134 and, therefore, denies the same.

135. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 135 and, therefore, denies the same.

h. Other 3taps Subscribers.

136. 3taps admits that the number of entities using user-generated content posted on craigslist's website and indexed by 3taps was growing at the time craigslist initially filed this lawsuit, and that this number would be growing even more rapidly absent craigslist's anticompetitive scheme described in 3taps' First Amended Counterclaim. 3taps denies the allegations in paragraph 136 to the extent they suggest that 3taps infringes any copyright protection asserted by craigslist, misappropriates any content, or violates any other law. 3taps denies the remaining allegations in paragraph 136.

137. 3taps admits that SnapStore, HuntSmartly, jaxed.com, rentvalet.us, and searchtempest.com use or used publicly available, user-generated content posted on craigslist's website and indexed by 3taps. 3taps denies the allegations in paragraph 137 to the extent they suggest that 3taps infringes any copyright protection asserted by craigslist, misappropriates any content, or violates any other law. 3taps otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 137 and, therefore, denies the same.

138. 3taps denies the allegations in paragraph 138.

F. Greg Kidd Is Personally Liable For 3taps' Unlawful Conduct

a. 3taps Is An Alter Ego of Mr. Kidd

139. 3taps denies the allegations in paragraph 139.

1 140. 3taps denies the allegations in paragraph 140.

2 141. 3taps denies the allegations in paragraph 141.

3 142. 3taps denies the allegations in paragraph 142.

4 143. 3taps denies the allegations in paragraph 143.

5 144. 3taps denies the allegations in paragraph 144.

6 145. 3taps denies the allegations in paragraph 145.

7 146. 3taps denies the allegations in paragraph 146.

8 147. The documents selectively quoted by craigslist speak for themselves. 3taps admits
9 that Kidd wrote the words quoted by craigslist, but denies craigslist's characterization of those
10 words.

11 148. 3taps denies the allegations in paragraph 148.

12 149. 3taps denies the allegations in paragraph 149.

13 150. 3taps denies the first sentence of paragraph 150. 3taps admits that the *San*
14 *Francisco Chronicle*/SFGate.com article cited by craigslist in paragraph 150 states: “. . .Kidd, who
15 is a Square adviser and an early investor in Twitter, said he was willing to ‘burn some shares’ and
16 spend money to become one of the first companies to challenge Craigslist long enough to reach a
17 substantive court decision.”¹ However, 3taps denies that this statement supports craigslist's
18 allegation in paragraph 150 that Kidd pays 3taps' legal expenses for this litigation “from his own
19 funds and accounts.” 3taps denies the remaining allegations in paragraph 150.

20 151. 3taps denies the allegations in paragraph 151.

21 152. 3taps denies the allegations in paragraph 152.

22 153. 3taps denies the allegations in paragraph 153.

23 154. 3taps' tax returns speak for themselves. 3taps denies that Mr. Kidd is the sole
24 shareholder of 3taps' voting stock.

25 155. 3taps denies the allegations in paragraph 155.

26 156. 3taps denies the allegations in paragraph 156.

27 ¹ Paresh Dave, *3taps, PadMapper face Craigslist challenge*, S.F. CHRONICLE (Aug. 4, 2012),
28 <http://www.sfgate.com/technology/article/3taps-PadMapper-face-Craigslist-challenge-3762765.php>.

b. Greg Kidd Is the Guiding Spirit Behind 3taps' Unlawful Conduct

157. 3taps denies the allegations in paragraph 157.

158. 3taps admits the allegations in paragraph 158.

159. 3taps denies the allegations in paragraph 159.

160. 3taps denies the allegations in paragraph 160.

161. 3taps denies the allegations in paragraph 161.

162. 3taps denies the allegations in paragraph 162.

163. The documents craigslist selectively quotes from speak for themselves. 3taps denies any craigslist characterization of the documents or any remaining allegations in paragraph 163.

164. The documents craigslist selectively quotes from speak for themselves. 3taps denies any craigslist characterization of the documents or any remaining allegations in paragraph 164.

165. 3taps admits that Kidd made the statements attributed to him in paragraph 165, but denies that Kidd made the statements in support of or acknowledgment of any illegal behavior on the part of Kidd or 3taps. 3taps denies the allegations in paragraph 165 to the extent they suggest any wrongdoing or any violation of any law on the part of Kidd or 3taps.

166. 3taps denies the allegations in paragraph 166.

167. 3taps denies the allegations in paragraph 167.

G. Hard Yaka is an Alter Ego of Mr. Kidd and 3taps

168. 3taps denies the allegations in paragraph 168.

169. 3taps denies the allegations in paragraph 169.

170. 3taps denies the allegations in paragraph 170.

171. 3taps denies the allegations in paragraph 171.

172. 3taps denies the allegations in paragraph 172.

173. 3taps denies the allegations in paragraph 173.

174. 3taps denies the allegations in paragraph 174.

175. 3taps denies the first sentence of paragraph 175. 3taps denies craigslist's characterization of the statements attributed to Kidd by paragraph 175. 3taps admits that shares of

1 Hard Yaka are held by Kidd and certain of his relatives, but denies any suggestion or insinuation
2 that this fact imposes any liability on Kidd, 3taps, or Hard Yaka.

3 176. 3taps denies the first sentence of paragraph 176. 3taps admits that Kidd has referred
4 to himself as the “3taps Founder” and as the “Founder/CEO of Hard Yaka,” but denies these
5 allegations to the extent that they suggest or insinuate that these facts impose any liability on Kidd,
6 3taps, or Hard Yaka.

7 177. 3taps denies the allegations in paragraph 177.

8 178. 3taps denies the allegations in paragraph 178.

9 179. 3taps admits the allegations in paragraph 179.

10 180. 3taps denies the allegations in paragraph 180.

11 181. 3taps denies the allegations in paragraph 181.

12 182. 3taps denies the allegations in paragraph 182.

13 183. 3taps denies the first sentence of paragraph 183. The Hard Yaka and 3taps websites
14 speak for themselves. 3taps denies craigslist’s characterization of the sections of Hard Yaka’s
15 website cited in paragraph 183. 3taps denies the allegations in paragraph 183 that concern Hard
16 Yaka’s and 3taps’ respective websites to the extent they suggest that the websites are
17 “commingled” and to the extent they suggest any liability on the part of 3taps or Hard Yaka.

18 184. 3taps denies the allegations in paragraph 184.

19 185. 3taps denies the allegations in paragraph 185.

20 186. 3taps denies the allegations in paragraph 186.

21 187. 3taps admits that Kidd has used the phrase “investment arm” to refer to Hard Yaka.
22 3taps denies craigslist’s characterization of the remaining allegations in paragraph 187.

23 188. 3taps denies the allegations in paragraph 188.

24 189. The documents craigslist selectively quotes from speak for themselves. 3taps denies
25 craigslist’s characterization of the statements attributed to Kidd by paragraph 189.

26 190. 3taps denies the allegations in paragraph 190.

FIRST CLAIM FOR RELIEF
Trespass as to all Defendants

191. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs as if fully set forth herein.

192. 3taps denies the allegations in paragraph 192.

193. 3taps denies the allegations in paragraph 193.

194. 3taps denies the allegations in paragraph 194.

195. 3taps denies the allegations in paragraph 195.

SECOND CLAIM FOR RELIEF
Breach of Contract as to all Defendants

196. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs as if fully set forth herein.

197. 3taps denies the allegations in paragraph 197.

198. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 198 and, therefore, denies the same.

199. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 199 and, therefore, denies the same.

200. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 200 and, therefore, denies the same.

201. 3taps denies the allegations in paragraph 201 as they pertain to 3taps. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 201 and, therefore, denies the same.

202. 3taps denies the allegations in paragraph 202 as they pertain to 3taps. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 202 and, therefore, denies the same.

203. 3taps admits that on or around March 7, 2012, craigslist sent 3taps a purported cease-and-desist letter. The cease-and-desist letter speaks for itself, and 3taps denies any craigslist characterization of the cease-and-desist letter. 3taps admits that a copy of a document purporting

1 to be craigslist's TOU was enclosed with that letter. 3taps denies the remaining allegations in
2 paragraph 203.

3 204. 3taps admits that craigslist sent PadMapper a purported cease-and-desist letter. The
4 cease-and-desist letter speaks for itself, and 3taps denies any craigslist characterization of the
5 purported cease-and-desist letter. 3taps lacks knowledge or information sufficient to form a belief
6 as to the truth of the remaining allegations in paragraph 204 and, therefore, denies the same.

7 205. 3taps admits that craigslist sent Lovely a purported cease-and-desist letter. The
8 cease-and-desist letter speaks for itself, and 3taps denies any craigslist characterization of the
9 purported cease-and-desist letter. 3taps lacks knowledge or information sufficient to form a belief
10 as to the truth of the remaining allegations in paragraph 205 and, therefore, denies the same.

11 206. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in paragraph 206 and, therefore, denies the same.

13 207. 3taps admits that on or around December 13, 2013, craigslist sent 3taps and Lovely
14 a purported cease-and-desist letter. The cease-and-desist letter speaks for itself, and 3taps denies
15 any craigslist characterization of the cease-and-desist letter. 3taps admits that a copy of a
16 document purporting to be craigslist's TOU was enclosed with that letter. 3taps denies the
17 remaining allegations in paragraph 207.

18 208. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations in paragraph 208 and, therefore, denies the same.

20 209. 3taps denies the allegations in paragraph 209.

21 210. 3taps admits that it provides an API that provides publicly available information
22 originally found on craigslist. 3taps denies the remaining allegations in paragraph 210.

23 211. 3taps admits that it provides an API that provides publicly available information
24 originally found on craigslist. 3taps denies the remaining allegations in paragraph 211.

25 212. 3taps admits that it provides an API that provides publicly available information
26 originally found on craigslist. 3taps denies the remaining allegations in paragraph 212.

27 213. 3taps admits that it provides an API that provides publicly available information
28 originally found on craigslist. 3taps denies the remaining allegations in paragraph 213.

1 214. 3taps denies the allegations in paragraph 214.

2 215. 3taps denies the allegations in paragraph 215.

3 216. 3taps denies the allegations in paragraph 216.

4 217. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations in paragraph 217 and, therefore, denies the same.

6 218. 3taps denies the allegations in paragraph 218.

7 219. 3taps denies the allegations in paragraph 219.

8 220. 3taps denies the allegations in paragraph 220.

9 **THIRD CLAIM FOR RELIEF**
10 **Misappropriation as to all Defendants**

11 221. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
12 as if fully set forth herein.

13 222. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in paragraph 222 and, therefore, denies the same.

15 223. 3taps denies the allegations in paragraph 223.

16 224. 3taps denies the allegations in paragraph 224.

17 225. 3taps denies the allegations in paragraph 225.

18 226. 3taps denies the allegations in paragraph 226.

19 227. 3taps denies the allegations in paragraph 227.

20 **FOURTH CLAIM FOR RELIEF**
21 **Copyright Infringement as to all Defendants 17 U.S.C. § 101 *et seq.***

22 228. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
23 as if fully set forth herein.

24 229. 3taps denies the allegations in paragraph 229.

25 230. 3taps denies the allegations in paragraph 230.

26 231. 3taps denies the allegations in paragraph 231.

27 232. 3taps denies the allegations in paragraph 232.

28 233. 3taps denies the allegations in paragraph 233.

1 234. 3taps denies the allegations in paragraph 234.

2 235. 3taps denies the allegations in paragraph 235.

3 236. 3taps denies the allegations in paragraph 236.

4 237. 3taps denies the allegations in paragraph 237.

5 238. 3taps denies the allegations in paragraph 238.

6 **FIFTH CLAIM FOR RELIEF**
7 **Contributory Copyright Infringement as to Defendants 3taps, Kidd, and Hard Yaka**

8 239. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
9 as if fully set forth herein.

10 240. 3taps denies the allegations in paragraph 240.

11 241. 3taps denies the allegations in paragraph 241.

12 242. 3taps denies the allegations in paragraph 242.

13 243. 3taps denies the allegations in paragraph 243.

14 244. 3taps denies the allegations in paragraph 244.

15 245. 3taps denies the allegations in paragraph 245.

16 246. 3taps denies the allegations in paragraph 246.

17 247. 3taps denies the allegations in paragraph 247.

18 248. 3taps denies the allegations in paragraph 248.

19 249. 3taps denies the allegations in paragraph 249.

20 **SIXTH CLAIM FOR RELIEF**
21 **Federal Trademark Infringement as to Defendants 3taps , Kidd, Hard Yaka and PadMapper**
22 **15 U.S.C. § 1114**

23 250. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
24 as if fully set forth herein.

25 251. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in paragraph 251 and, therefore, denies the same.

27 252. 3taps denies the allegations in paragraph 252.

28 253. 3taps denies the allegations in paragraph 253.

254. 3taps denies the allegations in paragraph 254.

1 255. 3taps denies the allegations in paragraph 255.

2 256. 3taps denies the allegations in paragraph 256.

3 257. 3taps denies the allegations in paragraph 257.

4 258. 3taps denies the allegations in paragraph 258.

5 **SEVENTH CLAIM FOR RELIEF**

6 **Federal False Designation of Origin as to Defendants 3taps, Kidd, Hard Yaka, and**
7 **PadMapper**
8 **15 U.S.C. § 1125(a)**

9 259. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
10 as if fully set forth herein.

11 260. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in paragraph 260 and, therefore, denies the same.

13 261. 3taps denies the allegations in paragraph 261.

14 262. 3taps denies the allegations in paragraph 262.

15 263. 3taps denies the allegations in paragraph 263.

16 264. 3taps denies the allegations in paragraph 264.

17 265. 3taps denies the allegations in paragraph 265.

18 266. 3taps denies the allegations in paragraph 266.

19 267. 3taps denies the allegations in paragraph 267.

20 **EIGHTH CLAIM FOR RELIEF**

21 **Federal Dilution of a Famous Mark as to Defendants 3taps, Kidd, and Hard Yaka**
22 **15 U.S.C. § 1125(c)**

23 268. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
24 as if fully set forth herein.

25 269. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in paragraph 269 and, therefore, denies the same.

27 270. 3taps denies the allegations in paragraph 270 to the extent they imply any
28 wrongdoing or unlawful behavior. 3taps lacks knowledge or information sufficient to form a belief
as to the truth of the remaining allegations in paragraph 270 and, therefore, denies the same.

271. 3taps denies the allegations in paragraph 271.

1 272. 3taps denies the allegations in paragraph 272.

2 273. 3taps denies the allegations in paragraph 273.

3 274. 3taps denies the allegations in paragraph 274.

4 275. 3taps denies the allegations in paragraph 275.

5 276. 3taps denies the allegations in paragraph 276.

6 277. 3taps denies the allegations in paragraph 277.

7 278. 3taps denies the allegations in paragraph 278.

8 **NINTH CLAIM FOR RELIEF**
9 **Federal Cyberpiracy Prevention as to Defendants 3taps, Kidd, and Hard Yaka**
10 **15 U.S.C. § 1125(d)**

11 279. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
12 as if fully set forth herein.

13 280. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in paragraph 280 and, therefore, denies the same.

15 281. 3taps denies the allegations in paragraph 281.

16 282. 3taps denies the allegations in paragraph 282.

17 283. 3taps denies the allegations in paragraph 283.

18 284. 3taps denies the allegations in paragraph 284.

19 285. 3taps denies the allegations in paragraph 285.

20 286. 3taps denies the allegations in paragraph 286.

21 287. 3taps denies the allegations in paragraph 287.

22 **TENTH CLAIM FOR RELIEF**
23 **California Trademark Infringement as to Defendants 3taps, Kidd, Hard Yaka, and**
24 **PadMapper**
25 **Cal. Bus. & Prof. Code § 14245**

26 288. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
27 as if fully set forth herein.

28 289. 3taps denies the allegations in paragraph 289.

29 290. 3taps denies the allegations in paragraph 290.

30 291. 3taps denies the allegations in paragraph 291.

1 292. 3taps denies the allegations in paragraph 292.

2 293. 3taps denies the allegations in paragraph 293.

3 **ELEVENTH CLAIM FOR RELIEF**

4 **Common Law Trademark Infringement as to Defendants 3taps, Kidd, Hard Yaka, and
PadMapper**

5 294. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
6 as if fully set forth herein.

7 295. 3taps denies the allegations in paragraph 295.

8 296. 3taps denies the allegations in paragraph 296.

9 297. 3taps denies the allegations in paragraph 297.

10 298. 3taps denies the allegations in paragraph 298.

11 299. 3taps denies the allegations in paragraph 299.

12 300. 3taps denies the allegations in paragraph 300.

13 **TWELFTH CLAIM FOR RELIEF**

14 **California Unfair Competition
Cal. Bus. & Prof. Code § 17200 *et seq.* as to all Defendants**

15 301. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
16 as if fully set forth herein.

17 302. 3taps denies the allegations in paragraph 302.

18 303. 3taps denies the allegations in paragraph 303.

19 304. 3taps denies the allegations in paragraph 304.

20 **THIRTEENTH CLAIM FOR RELIEF**

21 **Computer Fraud and Abuse Act as to Defendants 3taps, Kidd, Hard Yaka, and Niessen
18 U.S.C. §1030 *et seq.***

22 305. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
23 as if fully set forth herein.

24 306. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in paragraph 306 and, therefore, denies the same.

26 307. 3taps denies the allegations in paragraph 307.

27 308. 3taps denies the allegations in paragraph 308.

28 309. 3taps denies the allegations in paragraph 309.

1 310. 3taps denies the allegations in paragraph 310.

2 311. 3taps denies the allegations in paragraph 311.

3 312. 3taps denies the allegations in paragraph 312.

4 313. 3taps denies the allegations in paragraph 313.

5 314. 3taps denies the allegations in paragraph 314.

6 **FOURTEENTH CLAIM FOR RELIEF**
7 **California Comprehensive Computer Access and Fraud Act as to**
8 **Defendants 3taps, Kidd, Hard Yaka, and Niessen**
9 **Cal. Penal Code §502**

10 315. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
11 as if fully set forth herein.

12 316. 3taps denies the allegations in paragraph 316.

13 317. 3taps denies the allegations in paragraph 317.

14 318. 3taps denies the allegations in paragraph 318.

15 319. 3taps denies the allegations in paragraph 319.

16 320. 3taps denies the allegations in paragraph 320.

17 321. 3taps denies the allegations in paragraph 321.

18 322. 3taps denies the allegations in paragraph 322.

19 323. 3taps denies the allegations in paragraph 323.

20 324. 3taps denies the allegations in paragraph 324.

21 325. 3taps denies the allegations in paragraph 325.

22 326. 3taps denies the allegations in paragraph 326.

23 **FIFTEENTH CLAIM FOR RELIEF**
24 **Aiding and Abetting Trespass as to Defendants 3taps, Kidd, and Hard Yaka**

25 327. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
26 as if fully set forth herein.

27 328. 3taps denies the allegations in paragraph 328.

28 329. 3taps denies the allegations in paragraph 329.

330. 3taps denies the allegations in paragraph 330.

1 331. 3taps denies the allegations in paragraph 331.

2 332. 3taps denies the allegations in paragraph 332.

3 333. 3taps denies the allegations in paragraph 333.

4 **SIXTEENTH CLAIM FOR RELIEF**

5 **Aiding and Abetting Misappropriation as to Defendants Niessen, 3taps, Kidd, and Hard**
6 **Yaka**

7 334. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
8 as if fully set forth herein.

9 335. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations in paragraph 335 and, therefore, denies the same.

11 336. 3taps admits that it has knowledge that PadMapper and Lovely each uses publicly
12 available, user-generated content posted on craigslist's website and that they compete with
13 craigslist. 3taps admits that it indexes this content and provides it to PadMapper and Lovely. 3taps
14 denies, however, that this content is "craigslist content" because craigslist is not the owner or
15 exclusive licensee of its users' content. 3taps denies the remaining allegations in paragraph 336.

16 337. 3taps denies the allegations in paragraph 337.

17 338. 3taps denies the allegations in paragraph 338.

18 339. 3taps denies the allegations in paragraph 339.

19 340. 3taps denies the allegations in paragraph 340.

20 **SEVENTEENTH CLAIM FOR RELIEF**

21 **Accounting as to all Defendants**

22 341. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
23 as if fully set forth herein.

24 342. 3taps denies the allegations in paragraph 342.

25 343. 3taps denies the allegations in paragraph 343.

26 344. 3taps denies the allegations in paragraph 344.

EIGHTEENTH CLAIM FOR RELIEF

**Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM) as to
Defendants 3taps, Kidd, Hard Yaka and Lovely
15 U.S.C. § 7701 *et seq.***

345. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs as if fully set forth herein.

346. 3taps denies the allegations in paragraph 346.

347. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 347 and, therefore, denies the same.

348. 3taps denies the allegations in paragraph 348. To the extent the allegations in paragraph 348 relate to defendants other than 3taps, 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 348 and, therefore, denies the same.

349. 3taps denies the allegations in paragraph 349.

350. 3taps denies the allegations in paragraph 350. To the extent the allegations in paragraph 350 relate to defendants other than 3taps, 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 350 and, therefore, denies the same.

351. 3taps denies the allegations in paragraph 351. To the extent the allegations in paragraph 351 relate to defendants other than 3taps, 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 351 and, therefore, denies the same.

352. 3taps denies the allegations in paragraph 352. To the extent the allegations in paragraph 352 relate to defendants other than 3taps, 3taps lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 352 and, therefore, denies the same.

353. 3taps denies the allegations in paragraph 353. To the extent the allegations in paragraph 353 relate to defendants other than 3taps, 3taps lacks knowledge or information

1 sufficient to form a belief as to the truth of the allegations in paragraph 353 and, therefore, denies
2 the same.

3 354. 3taps denies the allegations in paragraph 354.

4 355. 3taps denies the allegations in paragraph 355.

5 356. 3taps denies the allegations in paragraph 356.

6 357. 3taps denies the allegations in paragraph 357.

7 358. 3taps denies the allegations in paragraph 358.

8 359. 3taps denies the allegations in paragraph 359.

9 360. 3taps denies the allegations in paragraph 360.

10 **NINETEENTH CLAIM FOR RELIEF**

11 **Restrictions on Unsolicited Commercial Email Advertisers as to Defendants 3taps, Kidd,
12 Hard Yaka and Lovely
Cal. Bus. & Prof. Code § 17529 *et seq.***

13 361. 3taps restates, realleges, and reiterates its responses in all the preceding paragraphs
14 as if fully set forth herein.

15 362. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations in paragraph 362 and, therefore, denies the same.

17 363. 3taps denies the allegations in paragraph 363.

18 364. 3taps lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations in paragraph 364 and, therefore, denies the same.

20 365. 3taps denies the allegations in paragraph 365.

21 366. 3taps denies the allegations in paragraph 366.

22 367. 3taps denies the allegations in paragraph 367.

23 368. 3taps denies the allegations in paragraph 368.

24 369. 3taps denies the allegations in paragraph 369.

25 370. 3taps denies the allegations in paragraph 370.

26 **AFFIRMATIVE DEFENSES**

27 **FIRST AFFIRMATIVE DEFENSE**

28 The SAC, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The SAC, in whole or in part, is precluded by the doctrines of laches, waiver, and estoppel.

THIRD AFFIRMATIVE DEFENSE

The SAC, in whole or in part, is barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

The SAC, in whole or in part, is barred by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because any alleged use of craigslist's allegedly copyrighted materials constitutes fair use.

SIXTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because any alleged use of craigslist's allegedly copyrighted materials is de minimis.

SEVENTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because the material allegedly copied is not owned by or registered to craigslist.

EIGHTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist lacks standing to bring any claim of copyright infringement.

NINTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because works by 3taps are not substantially similar to any work allegedly owned by craigslist.

TENTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because the copyright registrations are fraudulent, improper, or invalid.

ELEVENTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist licensed, explicitly or implicitly, the alleged copyrighted works. Among other things, craigslist makes user-generated content posted on its website freely available for public access and does not attempt to limit others from locating and

1 providing links to such content. Based upon accepted custom and practice, craigslist has impliedly
2 licensed use of this content by 3taps.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 The SAC fails, in whole or in part, because the ideas underlying the alleged copyrighted
5 works and their expressions merge, and thus the alleged copyrighted works are not entitled to
6 protection from infringement.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 The SAC fails, in whole or in part, because any alleged use of craigslist's trademarks
9 constitutes fair use.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 The SAC fails, in whole or in part, because any alleged use of craigslist's trademarks is not
12 likely to cause dilution, confusion, or impair the distinctiveness of any of craigslist's marks.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 The SAC fails, in whole or in part, because any alleged use of craigslist's trademarks is not
15 likely to cause confusion, deception, or mistake as to association, connection, sponsorship,
16 endorsement, or approval of craigslist.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 The SAC fails, in whole or in part, because the trademark registrations are fraudulent,
19 improper, or invalid.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 The SAC fails, in whole or in part, because the TOU are unconscionable.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 The SAC fails, in whole or in part, because the TOU are unenforceable because the TOU
24 are anticompetitive and violate the antitrust laws and/or because enforcement of the TOU would
25 further craigslist's illegal antitrust misconduct.

26 **NINETEENTH AFFIRMATIVE DEFENSE**

27 The SAC fails, in whole or in part, because 3taps did not breach the TOU.
28

TWENTIETH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because 3taps is not a party to the TOU and is not legally bound by them.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because the copyright registrations and all derivative claims of infringement, separately and collectively, constitute misuses of the copyrights and misapplication of the law and statutes on which they are ostensibly based. Included in the misuse are the following: craigslist's registrations are designed and intended to further an exclusive or limited monopoly that was neither granted by the copyright office nor permitted by law; craigslist cites "copyright law" as a basis on which to make baseless threats, including in frivolous and anticompetitive cease-and-desist letters; craigslist claims ownership of work created by others that is already in the public domain; and craigslist otherwise deploys its come-lately copyright registrations as part of a pattern and practice of inhibiting competition and impeding innovation.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist's claim for "hot news" misappropriation is barred in whole or in part by the Communications Decency Act, 47 U.S.C. § 230(c) because, among other things, 3taps is a provider of an "interactive computer service" and the material made accessible through its service is provided or supplied by third parties.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist's claims are barred by the First Amendment of the U.S. Constitution. 3taps' delivery of content to its customers constitutes free speech, free assembly, and/or free expression protected by the First Amendment.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist's claims are preempted by federal or California law.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist consented to 3taps' access of information on its website by making the website publicly available.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist made the information on its website accessible through lawful or proper means by making the website publicly available.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because the information on craigslist's website is generally known and available to the public, and thus has no independent economic value derived from not being generally known to persons who can obtain economic value from the information's disclosure or use.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist made the information on its website readily ascertainable by making the website publicly available.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because this lawsuit is in furtherance of craigslist's illegal overall scheme to harm competition in various online classified advertising markets.

THIRTIETH AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist is not an "Internet access service" provider as defined by the Controlling the Assault of Non-Solicited Pornography and Marketing ("CAN-SPAM") Act of 2003, 15 U.S.C. § 7701 *et seq.*, and, therefore, lacks standing to bring claims under the CAN-SPAM Act.

THIRTY-FIRST AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, because craigslist has not been "adversely affected by a violation of" or by "a pattern or practice that violates" the Controlling the Assault of Non-Solicited Pornography and Marketing ("CAN-SPAM") Act of 2003, 15 U.S.C. § 7701 *et seq.*, and, therefore, lacks standing to bring claims under the CAN-SPAM Act.

THIRTY-SECOND AFFIRMATIVE DEFENSE

The SAC fails, in whole or in part, under the safe harbor provision of 15 U.S.C. § 1125(d)(1)(B)(ii), as 3taps believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Discovery in this case has not been completed, and 3taps continues to investigate the allegations set forth in craigslist's SAC in order to ascertain the nature, basis, and extent of craigslist's claims. 3taps intends and reserves the right, pending further investigation and discovery, to rely upon such other defenses as may be found, discovered, or otherwise become available (including by change of law, judicial doctrine, and/or statute), and 3taps hereby reserves the right to amend its Answer and assert any such defenses.

REQUEST FOR RELIEF

WHEREFORE, 3taps requests relief as follows:

1. craigslist takes nothing by this action;
2. craigslist's SAC be dismissed with prejudice;
3. 3taps be awarded costs, expenses, and attorneys' fees as provided under applicable law, including but not limited to 17 U.S.C. § 505; and
4. 3taps recovers such other relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

3taps demands a trial by jury on all issues so triable.

DATED: February 3, 2015

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Jack DiCanio
Jack P. DiCanio

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